

Honorable Jack. E. Tanner

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, on behalf of)
the UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY and THE STATE OF)
WASHINGTON, DEPARTMENT OF ECOLOGY,)
et.al.

Plaintiffs,

v.

CITY OF TACOMA,

Defendant

) CIVIL ACTION
) NO. C89-583T

) Stipulated Motion by
) the U.S.A., the State of WA
) Dept. of Ecology and the
) City of Tacoma to Amend
) the Consent Decree

I. Change in Injunctive Relief

1. The United States of America, on behalf of the United States Environmental Protection Agency, the State of Washington Department of Ecology and the City of Tacoma seek by stipulated motion to amend the Consent Decree by modification of Section VI, Performance of the Work by Settling Defendant, to include new subparagraph G at paragraph 26, page 22. In addition, the parties seek to modify Section 3.3.4(7) of the Scope of Work Appendix II to the Tacoma Landfill Consent Decree by deleting Section 3.3.4(7).

2. Section 3.3.4(7) of the Scope of Work Appendix II to the Tacoma

U.S. Department of Justice
10th St. & Pennsylvania Ave., N.W.
Washington, D.C. 20530

Motion to Amend Consent Decree - 1 (202) 514-1200

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1 Landfill Consent Decree was vacated on May 14, 1993, by Order of
2 the United States District Court for the Western District of
3 Washington at Tacoma, the Honorable Jack E. Tanner, presiding.

4 3. The ruling vacating Section 3.3.4(7) was appealed by the
5 Plaintiffs to the United States Court of Appeals for the Ninth
6 Circuit. Chief Court Mediator David E. Lombardi, Jr. was assigned
7 to the case to facilitate a settlement between the parties.
8 Pursuant to settlement conferences held by the parties, a
9 stipulated motion was to be presented to the United States District
10 Court for the Western District of Washington at Tacoma to amend the
11 consent decree to effectuate settlement of the matter.

12 13 II. Modification of the Consent Decree

14 4. Pursuant to Section XXVIII. Modification of the Consent
15 Decree, modification may be made with the written approval of all
16 parties to this Consent Decree.

17 5. The Parties, invoking Section XXVIII of the Consent Decree,
18 now move to add a new subparagraph "G" to Section VI of the Consent
19 Decree at paragraph 26.

20 6. The Consent Decree at Section VI. Performance of the Work by
21 Settling Defendant, Paragraph 26 shall include new subparagraph G
22 to the Consent Decree and shall read:

23 "26.G.1. Tacoma shall augment the flow of Leach Creek such
24 that the minimum stream flow is never less than 1.5 cubic feet per
25 second ("cfs") as measured by the U.S.G.S. gaging station near 40th
26 Street (U.S.G.S. gauge number 12091200).

26.G.2.a. Should the groundwater extraction rate near Leach Creek be increased from its current extraction rate, either by increasing the extraction rate from the existing wells or by the installation of additional wells, Tacoma shall increase the augmentation flow proportionally and a new minimum flow rate shall be established based on the following formula: 1.5 cfs plus one-half of the increased edge of plume extraction rate. The current edge of plume ("EOP") pumping rate on the effective date of this Amendment to the Consent Decree is 0.62 cfs.

26.G.2.b. If the groundwater extraction rate from the groundwater extraction treatment system ("GETS") is increased and U.S.G.S. gauge number 12091300 (Steilacoom) subsequently records low flows such that the 30 day average minimum flow is less than 4.0 cfs, the parties agree to renegotiate in good faith for up to 60 days appropriate augmentation flows and methods for measuring compliance. In such negotiations, the parties shall consider historical flows in Leach Creek and ecological requirements of organisms residing in the creek. If negotiations fail, Ecology reserves the right to apply to the Court for additional relief to protect human health and the environment. The thirty day average minimum flow shall be determined by summing the minimum daily flows measured at U.S.G.S. gauge number 12091300 for any consecutive thirty day period, then dividing that total by thirty.

26.G.3. If Tacoma should learn that either or both of U.S.G.S. gauge numbers 12091200 (40th Street) and 12091300 (Steilacoom) are out of service or operating improperly, either

1 temporarily or permanently, Tacoma shall verbally notify Ecology
2 and the U.S.G.S. within 24 hours of becoming aware of the problem.
3 Tacoma shall assist the U.S.G.S. to make the gauge(s) operable and
4 shall augment Leach Creek as necessary to maintain the minimum flow
5 level. In any case, within 60 days of becoming aware that the
6 gauge is out of service, Tacoma shall assure that the stream flow
7 is measured at the location of U.S.G.S. gauge number 12091200 (40th
8 Street), so that an accurate minimum flow can be reported to
9 Ecology. Ecology reserves the right to independently confirm the
10 measurements of the U.S.G.S. or Tacoma at any time. After the 60
11 day grace period, times when stream flow is not measured shall be
12 deemed periods of noncompliance with this Consent Decree.

13 26.G.4. If Tacoma continually discharges to Leach Creek from
14 the holding basin all the water that is pumped by the entire GETS,
15 then Tacoma shall not be required to monitor flow levels in Leach
16 Creek. The use of any water for augmentation shall be subject to
17 Ecology approval and the processes as described infra at ¶¶ 26.G.6
18 and 26.G.7.

19 26.G.5. Tacoma shall continue flow augmentation until all of
20 the EOP wells (i.e., both those currently in existence and any
21 which may be added in the future) are permanently turned off and
22 the aquifer has recovered from the effects of the EOP wells.
23 Ecology shall render the decision as to when aquifer recovery,
24 defined as the return of the water table to static, pre-pumping
25 levels, is complete.

26 26.G.6. Except as otherwise provided in ¶26.G.7, infra, the
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standards established in the Consent Decree at Section VI ¶28a.- c. and at Section 3.3.2.3.1 of the Scope of Work remain applicable.

26.G.7. The current source of augmentation water is Augmentation Well No. 1 which extracts water from the deep aquifer. Alternate sources of augmentation water may be acceptable, including groundwater extracted and treated by the landfill pump and treat system. Ecology agrees to review Tacoma's proposal(s), if any, for alternate sources of augmentation water. Ecology shall consider the suitability of proposed alternate augmentation water supply based on both the water's quality (physical, chemical, and biological suitability) and sustainable quantity. Ecology shall approve the GETS effluent as an alternate augmentation water supply if the proposed discharge meets the following water quality discharge standards which are based on the State's anti-degradation policy: for iron and manganese in Leach Creek, 1.5 mg/l and 1.9 mg/l, respectively. Ecology may also approve the GETS effluent as an alternate augmentation water supply if, in lieu of meeting these standards for iron and manganese, Ecology determines that the flow proposed for discharge meets all known, available and reasonable treatment ("AKART") requirements. Ecology shall determine whether the GETS effluent or any other alternate augmentation water supply may be used.

26.G.8. As long as Augmentation well No. 1 is used as the augmentation source, in part or total, Tacoma shall record and submit to Ecology Water Resources Program, or its successors, monthly totals of the volume of water pumped from Augmentation well

1 No. 1. If the stream flow falls below the established minimum
2 during no more than ten calendar days in a calendar year due to
3 maintenance of the well or mechanical or electrical failure of the
4 pump in Augmentation Well No. 1, it shall not be deemed a period of
5 non-compliance with this Consent Decree.

6 26.G.9. As long as this Consent Decree requires Tacoma to
7 augment flows, Tacoma shall provide sufficient funds for the
8 operation and maintenance of the U.S.G.S. gauge currently in
9 service on Leach Creek, number 12091200.

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11 III. Dismissal of Pending Litigation with Prejudice

12 7. After notice and opportunity for public comment, and upon
13 approval by this Court, the agreement embodied in paragraph 6 of
14 this stipulated motion shall be fully incorporated into and
15 effective under the Consent Decree as "Section VI. Paragraph 26.G"
16 and fully enforceable thereunder.

17 8. Upon the Court's approval of this stipulated motion the
18 parties dismiss the pending litigation on this matter with
19 prejudice.

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21 IV. Reservation of Rights

22 9. In the event the Court does not approve this agreement between
23 the parties, the parties reserve their respective rights to
24 reinstate appeals without prejudice as provided by Order of the

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2 Chief Court Mediator for the United States Court of Appeals for the
3 Ninth Circuit.

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5 DATED this _____ day of -----, 1995.

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7 PRESENTED BY:

8
9 FOR THE UNITED STATES OF AMERICA

10
11 By: Steven Novick

Dated: 2/8/96

12 Steven Novick
13 Attorney
14 Environmental and Natural
15 Resources Division
16 U.S. Department of Justice
17 Washington, D.C. 20530

18
19 FOR THE STATE OF WASHINGTON

20
21 By: Tanya Barnett

Dated: 2/9/96

22 Tanya Barnett
23 Assistant Attorney General
24 State of Washington
25 Olympia, WA 98504

26
27 FOR THE CITY OF TACOMA

28
BY: Robert Mack

Dated: 6 October 1995

Robert Mack
Smith Alling Lane
Tacoma, Washington

BY: Ray E. Corpuz Jr.

Dated: 10-25-95

Ray E. Corpuz Jr.
City Manager for City of Tacoma
Tacoma, Washington

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10th St. & Pennsylvania Ave., N.W.
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(202) 514-1200

1
2 BY:

William Pugh
William Pugh, Director
City of Tacoma
Department of Public Works
Tacoma, Washington 98402

Dated:

10/20/95

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5
6 BY:

Peter C. Luttropp
Peter C. Luttropp, Director
City of Tacoma Dept. of Finance

Dated:

7
8 Attest:

9
10 BY:

Rick Rosenblatt
Rick Rosenblatt
Acting City Clerk
City of Tacoma

Dated:

10/25/95

11
12 Approved as to Form:

13
14 BY:

Robert Betcone
Robert Betcone
Assistant City Attorney
City of Tacoma

Dated:

10/19/95